IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 233 of 1995.

Reserved on: 29.5.2007.

Date of decision: 15.6.2007.

Dhakpa Nangial & Ors. …Appellants

Versus

Palzar Singh and Ors. …Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellants: Mr. Vinay Thakur, Advocate.

For the respondents: Mr. R.S. Jamalta, Advocate, for respondents No. 1(a) to 1(h).

Pt. Om Parkash and Mr. Ashutosh Burathoki, Advocates, for respondent No. 3.

V.K. Ahuja, J.

This is a Regular Second Appeal filed by the appellants/plaintiffs against the judgment and decree of the Court of learned District Judge, Kinnaur dated 1.4.1995, vide which the decree passed by the learned Senior Sub Judge, Kinnaur, dated 31.10.1990 was affirmed.

A suit for declaration with consequential relief of injunction was filed by the appellants in regard to the land pleading that the land in the name of defendant No. 1 was in lieu of maintenance for her life

[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

based upon the custom known as 'Panetang'. The entry showing her as a tenant was also challenged and a reference was also made to the previous proceedings in between the parties and the plaintiff pleaded that he was not bound by the previous judgments since he was not a party in the appeal against the judgment of trial Court.

Defendant No. 1 contested the suit. The suit was tried by the learned trial Court who dismissed the same and the findings were affirmed by the learned first appellate Court.

I have heard the learned counsel for the parties and have also gone through the record.

The submissions made by the learned counsel for the appellant were that the judgment and decree in the previous case are not binding upon him since the notice was not issued to him in appeal as will be clear from the Memo of Parties and the previous judgment does not operate as resjudicata and the Civil Court had to independently assess the evidence led before it in this case which was not done. Thus, it was submitted that the findings of the learned trial Court in regard to resjudicata and other issues are incorrect and are liable to be set aside. It was also submitted that defendant No. 1 had never claimed that she was owner by way of purchase by her mother and there is no evidence on record regarding purchase and there is no mutation or sale deed on record except statement of defendant No. 1. It was also submitted that the land was ancestral and defendant No. 1 never challenged the entries that they are wrong and the entry of Tahayat in favour of defendant No. 1 was never challenged by any person. It was submitted that there was a custom of valid gift but it could be held to be valid if there was a registered deed and the gift was of self acquired property. On the other

hand, the learned counsel for the respondent No. 1 had supported the impugned judgments for the reasons given therein. The learned counsel for the respondents had relied upon the decision in **Karnataka Board of Wakf** Vs. **Anjuman-E-Ismail Madris-Un-Niswan**, **AIR 1999 Supreme Court 3067**, wherein it was held while dealing with the powers of High Court that the concurrent finding of fact that property in question was Wakf property, cannot be interfered by High Court in a routine and casual manner by substituting its subjective satisfaction in place of lower Courts.

On a perusal of the arguments advanced at the hearing, it is clear that various questions have been raised during the course of arguments in regard to the findings as to whether the gift was valid or not, whether the gift was made of self acquired property or the ancestral property or whether the plaintiff was or was not a party to the appeal in the previous case since no notice was issued to him. All these questions pertained to the findings of fact and it has to be seen as to whether there are findings in this regard by both the Courts below or not and as to whether there has to be reappraisal of the evidence by this Court. A perusal of the findings of the learned trial Court shows that there are specific findings of learned trial Court under Issue No. 1 that the suit land was not ancestral qua the interest of the plaintiff. There are also findings that defendant No. 1 got the suit land under the custom of 'Panetang' for life only and record showing her as tenant of the suit land is wrong. There are also findings under Issue No. 3 in regard to question as to whether no notice of appeal was served upon the plaintiff and the decree passed in the said appeal are not binding upon the plaintiff. The learned trial Court had also held that the gift in favour of Akal Pati was

valid and binding upon the reversioners and that the land was given to the defendant under the custom for her life. The learned District Judge had also referred to the oral and documentary evidence led by both the parties and the evidence in regard to custom, gift deed and nature of the property was also discussed by the learned first Appellate Court. The findings of learned trial Court on all the issues were upheld and nothing has been pointed out specifically to hold that the evidence led by both the parties oral as well as documentary needs to be reappreciated by this Court sitting in second appeal. No substantial question of law is involved in this case though the appeal was admitted on substantial questions of law No. 1 to 3 as have been formulated at page No. 6 of the Paper Book. A perusal of these questions of law framed shows that the appeal was admitted on the ground that whether the principle of estoppel was attracted against the appellants and proforma respondents as well as that respondent No. 1 held the land till her life time. Both these questions are based upon evidence led by the parties and these pertain to findings of fact recorded by both the Courts below and, therefore, there can be no reappraisal of the evidence while sitting in appeal and as such, I am of the opinion that no substantial question of law is made out, not even question of law, which calls for reappraisal of evidence. Thus, I accordingly hold that there is no merit in the appeal filed by the appellants, which deserves to be dismissed and is dismissed accordingly.

(V.K. Ahuja),
Judge

June 15, 2007
(BSS)